

AMENDED IN ASSEMBLY MARCH 26, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 495

Introduced by Assembly Member Garcia

February 14, 2003

An act to amend ~~Section 647.7 to~~ *Sections 290 and 647 of, and to add Section 647.65 to,* the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 495, as amended, Garcia. Invasion of privacy: concealed cameras.

Existing law makes it a misdemeanor to secretly videotape, film, photograph, or record by electronic means, another, identifiable person under or through his or her clothing, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of that person and invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy.

This bill would provide that any person who violates the above provision for the purpose of viewing the body of, or the undergarments worn by, a minor; *is guilty of a felony and shall, as an enhancement,* be punished by ~~an additional~~ *imprisonment in the state prison for 16 months, or 2 or 3 years, and by a fine of \$25,000. The bill would impose additional punishment on a person who distributes, as specified, any videotape, film, photograph, or other electronic record created as a result of a violation of the bill's provisions; or who violates the bill's provisions in a place where children congregate, as specified. The bill*

would provide that any person who violates the bill's provisions shall be required to register as a sex offender. By creating ~~an enhancement for an existing crime~~ new crimes and enhancements and by increasing the scope of persons subject to sex offender registration, this bill would impose a state-mandated local program on local governments.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. ~~Section 647.7 of the Penal Code is amended to~~
 2 ~~read:~~
 3 ~~647.7. (a) In any case in which a person is convicted of~~
 4 ~~violating subdivision (i) or (k) of Section 647, the court may~~
 5 ~~require counseling as a condition of probation. Any defendant so~~
 6 ~~ordered to be placed in a counseling program shall be responsible~~
 7 ~~for paying the expense of his or her participation in the counseling~~
 8 ~~program as determined by the court. The court shall take into~~
 9 ~~consideration the ability of the defendant to pay, and no defendant~~
 10 ~~shall be denied probation because of his or her inability to pay.~~

~~(b) Every person who, having been convicted of violating subdivision (i) or (k) of Section 647, commits a second or subsequent violation of subdivision (i) or (k) of Section 647, shall be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.~~

~~(c) Any person who violates paragraph (2) of subdivision (k) of Section 647 for the purpose of viewing the body of, or the undergarments worn by, a minor, shall, in addition to any penalty imposed under Section 647, be punished by an additional fine of twenty-five thousand dollars (\$25,000).~~

~~SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~

SECTION 1. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within California, or while attending school or working in California, as described in subparagraph (G), shall be required to register with the chief of police of the city in which he or she is residing, or if he or she has no residence, is located, or the sheriff of the county if he or she is residing, or if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing, or if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.

(B) If the person who is registering has more than one residence address or location at which he or she regularly resides or is

1 located, he or she shall register in accordance with subparagraph
2 (A) in each of the jurisdictions in which he or she regularly resides
3 or is located. If all of the addresses or locations are within the same
4 jurisdiction, the person shall provide the registering authority with
5 all of the addresses or locations where he or she regularly resides
6 or is located.

7 (C) If the person who is registering has no residence address,
8 he or she shall update his or her registration no less than once every
9 60 days in addition to the requirement in subparagraph (A), on a
10 form as may be required by the Department of Justice, with the
11 entity or entities described in subparagraph (A) in whose
12 jurisdiction he or she is located at the time he or she is updating the
13 registration.

14 (D) Beginning on his or her first birthday following
15 registration or change of address, the person shall be required to
16 register annually, within five working days of his or her birthday,
17 to update his or her registration with the entities described in
18 subparagraph (A). At the annual update, the person shall provide
19 current information as required on the Department of Justice
20 annual update form, including the information described in
21 subparagraphs (A) to (C), inclusive, of paragraph (2) of
22 subdivision (e).

23 (E) In addition, every person who has ever been adjudicated a
24 sexually violent predator, as defined in Section 6600 of the
25 Welfare and Institutions Code, shall, after his or her release from
26 custody, verify his or her address no less than once every 90 days
27 and place of employment, including the name and address of the
28 employer, in a manner established by the Department of Justice.

29 (F) No entity shall require a person to pay a fee to register or
30 update his or her registration pursuant to this section. The
31 registering agency shall submit registrations, including annual
32 updates or changes of address, directly into the Department of
33 Justice Violent Crime Information Network (VCIN).

34 (G) Persons required to register in their state of residence who
35 are out-of-state residents employed, or carrying on a vocation in
36 California on a full-time or part-time basis, with or without
37 compensation, for more than 14 days, or for an aggregate period
38 exceeding 30 days in a calendar year, shall register in accordance
39 with subparagraph (A). Persons described in paragraph (2) who
40 are out-of-state residents enrolled in any educational institution in

California, as defined in Section 22129 of the Education Code, on a full-time or part-time basis, shall register in accordance with subparagraph (A). The place where the out-of-state resident is located, for purposes of registration, shall be the place where the person is employed, carrying on a vocation, or attending school. The out-of-state resident subject to this subparagraph shall, in addition to the information required pursuant to subdivision (e), provide the registering authority with the name of his or her place of employment or the name of the school attended in California, and his or her address or location in his or her state of residence. The registration requirement for persons subject to this subparagraph shall become operative on November 25, 2000. The terms “employed or carries on a vocation” include employment whether or not financially compensated, volunteered, or performed for government or educational benefit.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, ~~or~~ 647.6, *or* 647.65, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under

1 Article 1 (commencing with Section 6300) of Chapter 2 of Part 2
2 of Division 6 of the Welfare and Institutions Code or any person
3 who has been found guilty in the guilt phase of a trial for an offense
4 for which registration is required by this section but who has been
5 found not guilty by reason of insanity in the sanity phase of the
6 trial.

7 (D) Any person who, since July 1, 1944, has been, or is
8 hereafter convicted in any other court, including any state, federal,
9 or military court, of any offense that, if committed or attempted in
10 this state, would have been punishable as one or more of the
11 offenses described in subparagraph (A) or any person ordered by
12 any other court, including any state, federal, or military court, to
13 register as a sex offender for any offense, if the court found at the
14 time of conviction or sentencing that the person committed the
15 offense as a result of sexual compulsion or for purposes of sexual
16 gratification.

17 (E) Any person ordered by any court to register pursuant to this
18 section for any offense not included specifically in this section if
19 the court finds at the time of conviction or sentencing that the
20 person committed the offense as a result of sexual compulsion or
21 for purposes of sexual gratification. The court shall state on the
22 record the reasons for its findings and the reasons for requiring
23 registration.

24 (F) (i) Notwithstanding any other subdivision, a person who
25 was convicted before January 1, 1976, under subdivision (a) of
26 Section 286, or Section 288a, shall not be required to register
27 pursuant to this section for that conviction if the conviction was for
28 conduct between consenting adults that was decriminalized by
29 Chapter 71 of the Statutes of 1975 or Chapter 1139 of the Statutes
30 of 1976. The Department of Justice shall remove that person from
31 the Sex Offender Registry, and the person is discharged from his
32 or her duty to register pursuant to the following procedure:

33 (I) The person submits to the Department of Justice official
34 documentary evidence, including court records or police reports,
35 that demonstrate that the person's conviction pursuant to either of
36 those sections was for conduct between consenting adults that was
37 decriminalized; or

38 (II) The person submits to the department a declaration stating
39 that the person's conviction pursuant to either of those sections was
40 for consensual conduct between adults that has been



decriminalized. The declaration shall be confidential and not a public record, and shall include the person's name, address, telephone number, date of birth, and a summary of the circumstances leading to the conviction, including the date of the conviction and county of the occurrence.

(III) The department shall determine whether the person's conviction was for conduct between consensual adults that has been decriminalized. If the conviction was for consensual conduct between adults that has been decriminalized, and the person has no other offenses for which he or she is required to register pursuant to this section, the department shall, within 60 days of receipt of those documents, notify the person that he or she is relieved of the duty to register, and shall notify the local law enforcement agency with which the person is registered that he or she has been relieved of the duty to register. The local law enforcement agency shall remove the person's registration from its files within 30 days of receipt of notification. If the documentary or other evidence submitted is insufficient to establish the person's claim, the department shall, within 60 days of receipt of those documents, notify the person that his or her claim cannot be established, and that the person shall continue to register pursuant to this section. The department shall provide, upon the person's request, any information relied upon by the department in making its determination that the person shall continue to register pursuant to this section. Any person whose claim has been denied by the department pursuant to this clause may petition the court to appeal the department's denial of the person's claim.

(ii) On or before July 1, 1998, the department shall make a report to the Legislature concerning the status of persons who may come under the provisions of this subparagraph, including the number of persons who were convicted before January 1, 1976, under subdivision (a) of Section 286 or Section 288a and are required to register under this section, the average age of these persons, the number of these persons who have any subsequent convictions for a registerable sex offense, and the number of these persons who have sought successfully or unsuccessfully to be relieved of their duty to register under this section.

(b) (1) Any person who is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the

1 commission or attempted commission of one of the offenses
2 specified in subdivision (a) or is released from a state hospital to
3 which he or she was committed as a mentally disordered sex
4 offender under Article 1 (commencing with Section 6300) of
5 Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions
6 Code, shall, prior to discharge, parole, or release, be informed of
7 his or her duty to register under this section by the official in charge
8 of the place of confinement or hospital, and the official shall
9 require the person to read and sign any form that may be required
10 by the Department of Justice, stating that the duty of the person to
11 register under this section has been explained to the person. The
12 official in charge of the place of confinement or hospital shall
13 obtain the address where the person expects to reside upon his or
14 her discharge, parole, or release and shall report the address to the
15 Department of Justice. The official shall at the same time forward
16 a current photograph of the person to the Department of Justice.

17 (2) The official in charge of the place of confinement or
18 hospital shall give one copy of the form to the person and shall send
19 one copy to the Department of Justice and one copy to the
20 appropriate law enforcement agency or agencies having
21 jurisdiction over the place the person expects to reside upon
22 discharge, parole, or release. If the conviction that makes the
23 person subject to this section is a felony conviction, the official in
24 charge shall, not later than 45 days prior to the scheduled release
25 of the person, send one copy to the appropriate law enforcement
26 agency or agencies having local jurisdiction where the person
27 expects to reside upon discharge, parole, or release; one copy to the
28 prosecuting agency that prosecuted the person; and one copy to the
29 Department of Justice. The official in charge of the place of
30 confinement or hospital shall retain one copy.

31 (c) (1) Any person who is convicted in this state of the
32 commission or attempted commission of any of the offenses
33 specified in subdivision (a) and who is released on probation, shall,
34 prior to release or discharge, be informed of the duty to register
35 under this section by the probation department, and a probation
36 officer shall require the person to read and sign any form that may
37 be required by the Department of Justice, stating that the duty of
38 the person to register under this section has been explained to him
39 or her. The probation officer shall obtain the address where the
40 person expects to reside upon release or discharge and shall report

1 within three days the address to the Department of Justice. The
2 probation officer shall give one copy of the form to the person,
3 send one copy to the Department of Justice, and forward one copy
4 to the appropriate law enforcement agency or agencies having
5 local jurisdiction where the person expects to reside upon his or her
6 discharge, parole, or release.

7 (2) Any person who is convicted in this state of the commission
8 or attempted commission of any of the offenses specified in
9 subdivision (a) and who is granted conditional release without
10 supervised probation, or discharged upon payment of a fine, shall,
11 prior to release or discharge, be informed of the duty to register
12 under this section in open court by the court in which the person
13 has been convicted, and the court shall require the person to read
14 and sign any form that may be required by the Department of
15 Justice, stating that the duty of the person to register under this
16 section has been explained to him or her. If the court finds that it
17 is in the interest of the efficiency of the court, the court may assign
18 the bailiff to require the person to read and sign forms under this
19 section. The court shall obtain the address where the person
20 expects to reside upon release or discharge and shall report within
21 three days the address to the Department of Justice. The court shall
22 give one copy of the form to the person, send one copy to the
23 Department of Justice, and forward one copy to the appropriate
24 law enforcement agency or agencies having local jurisdiction
25 where the person expects to reside upon his or her discharge,
26 parole, or release.

27 (d) (1) Any person who, on or after January 1, 1986, is
28 discharged or paroled from the Department of the Youth Authority
29 to the custody of which he or she was committed after having been
30 adjudicated a ward of the juvenile court pursuant to Section 602
31 of the Welfare and Institutions Code because of the commission or
32 attempted commission of any offense described in paragraph (3)
33 shall be subject to registration under the procedures of this section.

34 (2) Any person who is discharged or paroled from a facility in
35 another state that is equivalent to the Department of the Youth
36 Authority, to the custody of which he or she was committed
37 because of an offense which, if committed or attempted in this
38 state, would have been punishable as one or more of the offenses
39 described in paragraph (3), shall be subject to registration under
40 the procedures of this section.

(3) Any person described in this subdivision who committed an offense in violation of any of the following provisions shall be required to register pursuant to this section:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, Section 264.1, 266c, or 267, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, subdivision (a) of Section 289, ~~or~~ Section 647.6, *or Section 647.65*.

(C) A violation of Section 207 or 209 committed with the intent to violate Section 261, 286, 288, 288a, or 289.

(4) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration under this subdivision shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(5) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case that are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) On or after January 1, 1998, upon incarceration, placement, or commitment, or prior to release on probation, any person who is required to register under this section shall preregister. The preregistering official shall be the admitting officer at the place of incarceration, placement, or commitment, or the probation officer if the person is to be released on probation. The preregistration shall consist of both of the following:

1 (A) A preregistration statement in writing, signed by the
2 person, giving information that shall be required by the
3 Department of Justice.

4 (B) The fingerprints and a current photograph of the person.

5 (C) Any person who is preregistered pursuant to this
6 subdivision is required to be preregistered only once.

7 (2) A person described in paragraph (2) of subdivision (a) shall
8 register, or reregister if the person has previously registered, upon
9 release from incarceration, placement, or commitment, pursuant
10 to paragraph (1) of subdivision (a). The registration shall consist
11 of all of the following:

12 (A) A statement in writing signed by the person, giving
13 information as shall be required by the Department of Justice and
14 giving the name and address of the person's employer, and the
15 address of the person's place of employment if that is different
16 from the employer's main address.

17 (B) The fingerprints and a current photograph of the person
18 taken by the registering official.

19 (C) The license plate number of any vehicle owned by,
20 regularly driven by, or registered in the name of the person.

21 (D) Notice to the person that, in addition to the requirements of
22 paragraph (4), he or she may have a duty to register in any other
23 state where he or she may relocate.

24 (E) Copies of adequate proof of residence, which shall be
25 limited to a California driver's license, California identification
26 card, recent rent or utility receipt, printed personalized checks or
27 other recent banking documents showing that person's name and
28 address, or any other information that the registering official
29 believes is reliable. If the person has no residence and no
30 reasonable expectation of obtaining a residence in the foreseeable
31 future, the person shall so advise the registering official and shall
32 sign a statement provided by the registering official stating that
33 fact. Upon presentation of proof of residence to the registering
34 official or a signed statement that the person has no residence, the
35 person shall be allowed to register. If the person claims that he or
36 she has a residence but does not have any proof of residence, he or
37 she shall be allowed to register but shall furnish proof of residence
38 within 30 days of the day he or she is allowed to register.

39 (3) Within three days thereafter, the preregistering official or
40 the registering law enforcement agency or agencies shall forward

1 the statement, fingerprints, photograph, and vehicle license plate
2 number, if any, to the Department of Justice.

3 (f) (1) If any person who is required to register pursuant to this
4 section changes his or her residence address or location, whether
5 within the jurisdiction in which he or she is currently registered or
6 to a new jurisdiction inside or outside the state, the person shall
7 inform, in writing within five working days, the law enforcement
8 agency or agencies with which he or she last registered of the new
9 address or location. The law enforcement agency or agencies shall,
10 within three days after receipt of this information, forward a copy
11 of the change of address or location information to the Department
12 of Justice. The Department of Justice shall forward appropriate
13 registration data to the law enforcement agency or agencies having
14 local jurisdiction of the new place of residence or location.

15 (2) If the person's new address is in a Department of the Youth
16 Authority facility or a state prison or state mental institution, an
17 official of the place of incarceration, placement, or commitment
18 shall, within 90 days of receipt of the person, forward the
19 registrant's change of address information to the Department of
20 Justice. The agency need not provide a physical address for the
21 registrant but shall indicate that he or she is serving a period of
22 incarceration or commitment in a facility under the agency's
23 jurisdiction. This paragraph shall apply to persons received in a
24 Department of the Youth Authority facility or a state prison or state
25 mental institution on or after January 1, 1999. The Department of
26 Justice shall forward the change of address information to the
27 agency with which the person last registered.

28 (3) If any person who is required to register pursuant to this
29 section changes his or her name, the person shall inform, in person,
30 the law enforcement agency or agencies with which he or she is
31 currently registered within five working days. The law
32 enforcement agency or agencies shall forward a copy of this
33 information to the Department of Justice within three days of its
34 receipt.

35 (g) (1) Any person who is required to register under this
36 section based on a misdemeanor conviction or juvenile
37 adjudication who willfully violates any requirement of this section
38 is guilty of a misdemeanor punishable by imprisonment in a
39 county jail not exceeding one year.

(2) Except as provided in paragraphs (5) and (7), any person who is required to register under this section based on a felony conviction or juvenile adjudication who willfully violates any requirement of this section or who has a prior conviction or juvenile adjudication for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

If probation is granted or if the imposition or execution of sentence is suspended, it shall be a condition of the probation or suspension that the person serve at least 90 days in a county jail. The penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(3) Any person determined to be a mentally disordered sex offender or who has been found guilty in the guilt phase of trial for an offense for which registration is required under this section, but who has been found not guilty by reason of insanity in the sanity phase of the trial, or who has had a petition sustained in a juvenile adjudication for an offense for which registration is required under this section pursuant to subdivision (d), but who has been found not guilty by reason of insanity, who willfully violates any requirement of this section is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding one year. For any second or subsequent willful violation of any requirement of this section, the person is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

(4) If, after discharge from parole, the person is convicted of a felony or suffers a juvenile adjudication as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(5) Any person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, and who fails to verify his or her registration every 90 days as required pursuant to subparagraph (E) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

(6) Except as otherwise provided in paragraph (5), and in addition to any other penalty imposed under this subdivision, any person who is required pursuant to subparagraph (C) of paragraph (1) of subdivision (a) to update his or her registration every 60 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (C) of paragraph (1) of subdivision (a) shall update their registration every 60 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months.

(7) Any person who fails to provide proof of residence as required by subparagraph (E) of paragraph (2) of subdivision (e), regardless of the offense upon which the duty to register is based, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months.

(8) Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, “parole authority” has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be

temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This subdivision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, “mentally disordered sex offender” includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(l) (1) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(2) Every person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense against the penalties prescribed by paragraph (5) of subdivision (g).

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies,

1 or organizations the offender is likely to encounter, including, but
2 not limited to, the following:

3 (A) Public and private educational institutions, day care
4 establishments, and establishments and organizations that
5 primarily serve individuals likely to be victimized by the offender.

6 (B) Other community members at risk.

7 (2) The law enforcement agency may authorize persons and
8 entities who receive the information pursuant to paragraph (1) to
9 disclose information to additional persons only if the agency does
10 the following:

11 (A) Determines that all conditions set forth in paragraph (1)
12 have been satisfied regarding disclosure to the additional persons.

13 (B) Identifies the appropriate scope of further disclosure.

14 (3) Persons notified pursuant to paragraph (1) may disclose the
15 information provided by the law enforcement agency in the
16 manner and to the extent authorized by the law enforcement
17 agency.

18 (4) The information that may be disclosed pursuant to this
19 section includes the following:

20 (A) The offender's full name.

21 (B) The offender's known aliases.

22 (C) The offender's gender.

23 (D) The offender's race.

24 (E) The offender's physical description.

25 (F) The offender's photograph.

26 (G) The offender's date of birth.

27 (H) Crimes resulting in registration under this section.

28 (I) The offender's address, which must be verified prior to
29 publication.

30 (J) Description and license plate number of offender's vehicles
31 or vehicles the offender is known to drive.

32 (K) Type of victim targeted by the offender.

33 (L) Relevant parole or probation conditions, such as one
34 prohibiting contact with children.

35 (M) Dates of crimes resulting in classification under this
36 section.

37 (N) Date of release from confinement.

38 (O) The offender's enrollment, employment, or vocational
39 status with any university, college, community college, or other
40 institution of higher learning.

1 However, information disclosed pursuant to this subdivision
2 shall not include information that would identify the victim.

3 (5) If a law enforcement agency discloses information pursuant
4 to this subdivision, it shall include, with the disclosure, a statement
5 that the purpose of the release of the information is to allow
6 members of the public to protect themselves and their children
7 from sex offenders.

8 (6) For purposes of this section, “likely to encounter” means
9 both of the following:

10 (A) That the agencies, organizations, or other community
11 members are in a location or in close proximity to a location where
12 the offender lives or is employed, or that the offender visits or is
13 likely to visit on a regular basis.

14 (B) The types of interaction that ordinarily occur at that
15 location and other circumstances indicate that contact with the
16 offender is reasonably probable.

17 (7) For purposes of this section, “reasonably suspects” means
18 that it is objectively reasonable for a peace officer to entertain a
19 suspicion, based upon facts that could cause a reasonable person
20 in a like position, drawing when appropriate on his or her training
21 and experience, to suspect that a child or other person is at risk.

22 (8) For purposes of this section, “at risk” means a person is or
23 may be exposed to a risk of becoming a victim of a sex offense
24 committed by the offender.

25 (9) A law enforcement agency may continue to disclose
26 information on an offender under this subdivision for as long as the
27 offender is included in Section 290.4.

28 (n) In addition to the procedures set forth elsewhere in this
29 section, a designated law enforcement entity may advise the public
30 of the presence of high-risk sex offenders in its community
31 pursuant to this subdivision.

32 (1) For purposes of this subdivision:

33 (A) A high-risk sex offender is a person who has been
34 convicted of an offense specified in paragraph (1) of subdivision
35 (a) of Section 290.4, and also meets one of the following criteria:

36 (i) Has been convicted of three or more violent sex offenses, at
37 least two of which were brought and tried separately.

38 (ii) Has been convicted of two violent sex offenses and one or
39 more violent nonsex offenses, at least two of which were brought
40 and tried separately.

1 (iii) Has been convicted of one violent sex offense and two or
2 more violent nonsex offenses, at least two of which were brought
3 and tried separately.

4 (iv) Has been convicted of either two violent sex offenses or
5 one violent sex offense and one violent nonsex offense, at least two
6 of which were brought and tried separately, and has been arrested
7 on separate occasions for three or more violent sex offenses,
8 violent nonsex offenses, or associated offenses.

9 (v) Has been adjudicated a sexually violent predator pursuant
10 to Article 4 (commencing with Section 6600) of Chapter 2 of Part
11 2 of Division 6 of the Welfare and Institutions Code.

12 (B) A violent sex offense means any offense defined in Section
13 220, except attempt to commit mayhem, or Section 261, 264.1,
14 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily
15 injury during the commission of a sex offense, as provided in
16 Section 12022.8.

17 (C) A violent nonsex offense means any offense defined in
18 Section 187, subdivision (a) of Section 192, or Section 203, 206,
19 207, or 236, provided that the offense is a felony, subdivision (a)
20 of Section 273a, Section 273d or 451, or attempted murder, as
21 defined in Sections 187 and 664.

22 (D) An associated offense means any offense defined in
23 Section 243.4, provided that the offense is a felony, Section 311.1,
24 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314, Section 459,
25 provided the offense is of the first degree, Section 597 or 646.9,
26 subdivision (d), (h), or (i) of Section 647, Section 653m, or
27 infliction of great bodily injury during the commission of a felony,
28 as defined in Section 12022.7.

29 (E) For purposes of subparagraphs (B) to (D), inclusive, an
30 arrest or conviction for the statutory predecessor of any of the
31 enumerated offenses, or an arrest or conviction in any other
32 jurisdiction for any offense that, if committed or attempted in this
33 state, would have been punishable as one or more of the offenses
34 described in those subparagraphs, is to be considered in
35 determining whether an offender is a high-risk sex offender.

36 (F) For purposes of subparagraphs (B) to (D), inclusive, an
37 arrest as a juvenile or an adjudication as a ward of the juvenile
38 court within the meaning of Section 602 of the Welfare and
39 Institutions Code for any of the offenses described in those

1 subparagraphs is to be considered in determining whether an
2 offender is a high-risk sex offender.

3 (G) Notwithstanding subparagraphs (A) to (D), inclusive, an
4 offender shall not be considered to be a high-risk sex offender if
5 either of the following apply:

6 (i) The offender's most recent conviction or arrest for an
7 offense described in subparagraphs (B) to (D), inclusive, occurred
8 more than five years prior to the high-risk assessment by the
9 Department of Justice, excluding periods of confinement.

10 (ii) The offender notifies the Department of Justice, on a form
11 approved by the department and available at any sheriff's office,
12 that he or she has not been convicted in the preceding 15 years,
13 excluding periods of confinement, of an offense for which
14 registration is required under paragraph (2) of subdivision (a), and
15 the department is able, upon exercise of reasonable diligence, to
16 verify the information provided in paragraph (2).

17 (H) "Confinement" means confinement in a jail, prison,
18 school, road camp, or other penal institution, confinement in a
19 state hospital to which the offender was committed as a mentally
20 disordered sex offender under Article 1 (commencing with
21 Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare
22 and Institutions Code, or confinement in a facility designated by
23 the Director of Mental Health to which the offender was
24 committed as a sexually violent predator under Article 4
25 (commencing with Section 6600) of Chapter 2 of Part 2 of
26 Division 6 of the Welfare and Institutions Code.

27 (I) "Designated law enforcement entity" means any of the
28 following: municipal police department; sheriff's department;
29 district attorney's office; county probation department;
30 Department of Justice; Department of Corrections; Department of
31 the Youth Authority; Department of the California Highway
32 Patrol; or the police department of any campus of the University
33 of California, California State University, or community college.

34 (2) The Department of Justice shall continually search the
35 records provided to it pursuant to subdivision (b) and identify, on
36 the basis of those records, high-risk sex offenders. Four times each
37 year, the department shall provide to each chief of police and
38 sheriff in the state, and to any other designated law enforcement
39 entity upon request, the following information regarding each
40 identified high-risk sex offender: full name; known aliases;

1 gender; race; physical description; photograph; date of birth; and
2 crimes resulting in classification under this section.

3 (3) The Department of Justice and any designated law
4 enforcement entity to which notice has been given pursuant to
5 paragraph (2) may cause to be made public, by whatever means the
6 agency deems necessary to ensure the public safety, based upon
7 information available to the agency concerning a specific person,
8 including, but not limited to, the information described in
9 paragraph (2); the offender's address, which shall be verified prior
10 to publication; description and license plate number of the
11 offender's vehicles or vehicles the offender is known to drive; type
12 of victim targeted by the offender; relevant parole or probation
13 conditions, such as one prohibiting contact with children; dates of
14 crimes resulting in classification under this section; and date of
15 release from confinement; but excluding information that would
16 identify the victim.

17 (4) Notwithstanding any other provision of law, any person
18 described in paragraph (2) of subdivision (p) who receives
19 information from a designated law enforcement entity pursuant to
20 paragraph (3) may disclose that information in the manner and to
21 the extent authorized by the law enforcement entity.

22 (5) The law enforcement agency may authorize persons and
23 entities who receive the information pursuant to paragraph (3) to
24 disclose information to additional persons only if the agency does
25 the following:

26 (A) Determines that all conditions set forth in this subdivision
27 have been satisfied regarding disclosure to the additional persons.

28 (B) Identifies the appropriate scope of further disclosure.

29 (o) Agencies disseminating information to the public pursuant
30 to Section 290.4 shall maintain records of those persons requesting
31 to view the CD-ROM or other electronic media for a minimum of
32 five years. Agencies disseminating information to the public
33 pursuant to subdivision (n) shall maintain records of the means and
34 dates of dissemination for a minimum of five years.

35 (p) (1) Any law enforcement agency and employees of any
36 law enforcement agency shall be immune from liability for good
37 faith conduct under this section. For the purposes of this section,
38 "law enforcement agency" means the Attorney General of
39 California, every district attorney, the Department of Corrections,
40 the Department of the Youth Authority, and every state or local

1 agency expressly authorized by statute to investigate or prosecute
2 law violators.

3 (2) Any public or private educational institution, day care
4 facility, or any child care custodian described in Section 11165.7,
5 or any employee of a public or private educational institution or
6 day care facility which in good faith disseminates information as
7 authorized pursuant to paragraph (3) of subdivision (m) or
8 paragraph (4) of subdivision (n) that is provided by a law
9 enforcement agency or an employee of a law enforcement agency
10 shall be immune from civil liability.

11 (q) (1) Any person who uses information disclosed pursuant to
12 this section to commit a felony shall be punished, in addition and
13 consecutive to any other punishment, by a five-year term of
14 imprisonment in the state prison.

15 (2) Any person who uses information disclosed pursuant to this
16 section to commit a misdemeanor shall be subject to, in addition
17 to any other penalty or fine imposed, a fine of not less than five
18 hundred dollars (\$500) and not more than one thousand dollars
19 (\$1,000).

20 (r) The registration and public notification provisions of this
21 section are applicable to every person described in this section,
22 without regard to when his or her crimes were committed or his or
23 her duty to register pursuant to this section arose, and to every
24 offense described in this section, regardless of when it was
25 committed.

26 *SEC. 2. Section 647 of the Penal Code is amended to read:*

27 647. ~~Every~~ *Except as otherwise provided, every* person who
28 commits any of the following acts is guilty of disorderly conduct,
29 a misdemeanor:

30 (a) Who solicits anyone to engage in or who engages in lewd
31 or dissolute conduct in any public place or in any place open to the
32 public or exposed to public view.

33 (b) Who solicits or who agrees to engage in or who engages in
34 any act of prostitution. A person agrees to engage in an act of
35 prostitution when, with specific intent to so engage, he or she
36 manifests an acceptance of an offer or solicitation to so engage,
37 regardless of whether the offer or solicitation was made by a
38 person who also possessed the specific intent to engage in
39 prostitution. No agreement to engage in an act of prostitution shall
40 constitute a violation of this subdivision unless some act, in

1 addition to the agreement, is done within this state in furtherance
2 of the commission of an act of prostitution by the person agreeing
3 to engage in that act. As used in this subdivision, “prostitution”
4 includes any lewd act between persons for money or other
5 consideration.

6 (c) Who accosts other persons in any public place or in any
7 place open to the public for the purpose of begging or soliciting
8 alms.

9 (d) Who loiters in or about any toilet open to the public for the
10 purpose of engaging in or soliciting any lewd or lascivious or any
11 unlawful act.

12 (e) Who loiters or wanders upon the streets or from place to
13 place without apparent reason or business and who refuses to
14 identify himself or herself and to account for his or her presence
15 when requested by any peace officer so to do, if the surrounding
16 circumstances would indicate to a reasonable person that the
17 public safety demands this identification.

18 (f) Who is found in any public place under the influence of
19 intoxicating liquor, any drug, controlled substance, toluene, or any
20 combination of any intoxicating liquor, drug, controlled
21 substance, or toluene, in such a condition that he or she is unable
22 to exercise care for his or her own safety or the safety of others, or
23 by reason of his or her being under the influence of intoxicating
24 liquor, any drug, controlled substance, toluene, or any
25 combination of any intoxicating liquor, drug, or toluene, interferes
26 with or obstructs or prevents the free use of any street, sidewalk,
27 or other public way.

28 (g) When a person has violated subdivision (f) of this section,
29 a peace officer, if he or she is reasonably able to do so, shall place
30 the person, or cause him or her to be placed, in civil protective
31 custody. The person shall be taken to a facility, designated
32 pursuant to Section 5170 of the Welfare and Institutions Code, for
33 the 72-hour treatment and evaluation of inebriates. A peace officer
34 may place a person in civil protective custody with that kind and
35 degree of force which would be lawful were he or she effecting an
36 arrest for a misdemeanor without a warrant. No person who has
37 been placed in civil protective custody shall thereafter be subject
38 to any criminal prosecution or juvenile court proceeding based on
39 the facts giving rise to this placement. This subdivision shall not
40 apply to the following persons:



1 (1) Any person who is under the influence of any drug, or under
2 the combined influence of intoxicating liquor and any drug.

3 (2) Any person who a peace officer has probable cause to
4 believe has committed any felony, or who has committed any
5 misdemeanor in addition to subdivision (f) of this section.

6 (3) Any person who a peace officer in good faith believes will
7 attempt escape or will be unreasonably difficult for medical
8 personnel to control.

9 (h) Who loiters, prowls, or wanders upon the private property
10 of another, at any time, without visible or lawful business with the
11 owner or occupant. As used in this subdivision, “loiter” means to
12 delay or linger without a lawful purpose for being on the property
13 and for the purpose of committing a crime as opportunity may be
14 discovered.

15 (i) Who, while loitering, prowling, or wandering upon the
16 private property of another, at any time, peeks in the door or
17 window of any inhabited building or structure, without visible or
18 lawful business with the owner or occupant.

19 (j) Who lodges in any building, structure, vehicle, or place,
20 whether public or private, without the permission of the owner or
21 person entitled to the possession or in control of it.

22 (k) (1) Any person who looks through a hole or opening, into,
23 or otherwise views, by means of any instrumentality, including,
24 but not limited to, a periscope, telescope, binoculars, camera,
25 motion picture camera, or camcorder, the interior of a bathroom,
26 changing room, fitting room, dressing room, or tanning booth, or
27 the interior of any other area in which the occupant has a
28 reasonable expectation of privacy, with the intent to invade the
29 privacy of a person or persons inside. This subdivision shall not
30 apply to those areas of a private business used to count currency
31 or other negotiable instruments.

32 (2) Any person who uses a concealed camcorder, motion
33 picture camera, or photographic camera of any type, to secretly
34 videotape, film, photograph, or record by electronic means,
35 another, identifiable person under or through the clothing being
36 worn by that other person, for the purpose of viewing the body of,
37 or the undergarments worn by, that other person, without the
38 consent or knowledge of that other person, with the intent to
39 arouse, appeal to, or gratify the lust, passions, or sexual desires of
40 that person and invade the privacy of that other person, under

1 circumstances in which the other person has a reasonable
2 expectation of privacy.

3 In any accusatory pleading charging a violation of subdivision
4 (b), if the defendant has been once previously convicted of a
5 violation of that subdivision, the previous conviction shall be
6 charged in the accusatory pleading. If the previous conviction is
7 found to be true by the jury, upon a jury trial, or by the court, upon
8 a court trial, or is admitted by the defendant, the defendant shall
9 be imprisoned in a county jail for a period of not less than 45 days
10 and shall not be eligible for release upon completion of sentence,
11 on probation, on parole, on work furlough or work release, or on
12 any other basis until he or she has served a period of not less than
13 45 days in a county jail. In all cases in which probation is granted,
14 the court shall require as a condition thereof that the person be
15 confined in a county jail for at least 45 days. In no event does the
16 court have the power to absolve a person who violates this
17 subdivision from the obligation of spending at least 45 days in
18 confinement in a county jail.

19 In any accusatory pleading charging a violation of subdivision
20 (b), if the defendant has been previously convicted two or more
21 times of a violation of that subdivision, each such previous
22 conviction shall be charged in the accusatory pleading. If two or
23 more of these previous convictions are found to be true by the jury,
24 upon a jury trial, or by the court, upon a court trial, or are admitted
25 by the defendant, the defendant shall be imprisoned in a county jail
26 for a period of not less than 90 days and shall not be eligible for
27 release upon completion of sentence, on probation, on parole, on
28 work furlough or work release, or on any other basis until he or she
29 has served a period of not less than 90 days in a county jail. In all
30 cases in which probation is granted, the court shall require as a
31 condition thereof that the person be confined in a county jail for
32 at least 90 days. In no event does the court have the power to
33 absolve a person who violates this subdivision from the obligation
34 of spending at least 90 days in confinement in a county jail.

35 In addition to any punishment prescribed by this section, a court
36 may suspend, for not more than 30 days, the privilege of the person
37 to operate a motor vehicle pursuant to Section 13201.5 of the
38 Vehicle Code for any violation of subdivision (b) that was
39 committed within 1,000 feet of a private residence and with the use
40 of a vehicle. In lieu of the suspension, the court may order a

1 person's privilege to operate a motor vehicle restricted, for not
2 more than six months, to necessary travel to and from the person's
3 place of employment or education. If driving a motor vehicle is
4 necessary to perform the duties of the person's employment, the
5 court may also allow the person to drive in that person's scope of
6 employment.

7 *SEC. 3. Section 647.65 is added to the Penal Code, to read:*

8 *647.65. (a) Notwithstanding Section 647, any person who*
9 *violates paragraph (2) of subdivision (k) of Section 647 for the*
10 *purpose of viewing the body of, or the undergarments worn by, a*
11 *minor, shall be guilty of a felony punishable by imprisonment in the*
12 *state prison for 16 months, or two or three years, and by a fine of*
13 *twenty-five thousand dollars (\$25,000).*

14 *(b) (1) Any person who distributes any videotape, film,*
15 *photograph, or other electronic record created as a result of a*
16 *violation of subdivision (a) shall, in addition to any penalty*
17 *imposed under subdivision (a), be punished by an additional fine*
18 *of five thousand dollars (\$5,000) and an additional term of*
19 *imprisonment of six months, which shall not be served*
20 *concurrently with a term imposed under subdivision (c).*

21 *(2) For the purposes of this subdivision, "distribute" includes,*
22 *but is not limited to, distribution on the internet, copying of any*
23 *videotape, film, photograph, or other electronic record for*
24 *distribution, or handing out of printed photos or video.*

25 *(c) (1) Any person who violates subdivision (a) in a place*
26 *where children congregate shall, in addition to any penalty*
27 *imposed under subdivision (a), be punished by an additional fine*
28 *of five thousand dollars (\$5,000) and an additional term of*
29 *imprisonment of six months, which shall not be served*
30 *concurrently with any term imposed under subdivision (b).*

31 *(2) For the purposes of this subdivision, "a place where*
32 *children congregate" shall include, but not be limited to, schools,*
33 *day care facilities, boys and girls clubs or other youth clubs or*
34 *organizations, or youth sporting events.*

35 *SEC. 4. No reimbursement is required by this act pursuant to*
36 *Section 6 of Article XIII B of the California Constitution for*
37 *certain costs that may be incurred by a local agency or school*
38 *district because in that regard this act creates a new crime or*
39 *infraction, eliminates a crime or infraction, or changes the penalty*
40 *for a crime or infraction, within the meaning of Section 17556 of*

1 *the Government Code, or changes the definition of a crime within*
2 *the meaning of Section 6 of Article XIII B of the California*
3 *Constitution.*

4 *However, notwithstanding Section 17610 of the Government*
5 *Code, if the Commission on State Mandates determines that this*
6 *act contains other costs mandated by the state, reimbursement to*
7 *local agencies and school districts for those costs shall be made*
8 *pursuant to Part 7 (commencing with Section 17500) of Division*
9 *4 of Title 2 of the Government Code. If the statewide cost of the*
10 *claim for reimbursement does not exceed one million dollars*
11 *(\$1,000,000), reimbursement shall be made from the State*
12 *Mandates Claims Fund.*

